

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 12, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1215

Introduced by Assembly Member Benoit

February 23, 2007

An act to amend ~~Section 23152~~ *Sections 23152 and 23158* of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1215, as amended, Benoit. Vehicles: DUI.

(1) Existing law prohibits a person who has *a* specified level of alcohol in his or her blood from driving a vehicle. It is a crime for a person to violate this prohibition.

This bill would prohibit a person who has ~~a specified~~ *measurable* amount of methamphetamine, phencyclidine, cocaine, cocaine metabolite, *ecstasy*, *ecstasy metabolite*, *lysergic acid diethylamide*, *lysergic acid diethylamide metabolite*, heroin, or heroin metabolite in his or her blood or urine from driving a vehicle or being in actual physical control of a vehicle on a highway or on premises to which the public has access, thereby creating a new crime. *On or before January 1, 2009, the Department of Justice would be required to issue regulations specifying the detectable levels of each of the above specified substances that constitutes a “measurable amount” to ensure uniform enforcement.*

(2) *Under existing law, only specified medical and laboratory personnel may withdraw blood for purposes of testing its alcoholic content at the request of a peace officer.*

This bill would authorize these personnel to withdraw blood for the purposes of testing its drug content at the request of a peace officer.

(3) *This bill would declare the intent of the Legislature not to affect or preclude the prosecution of violations of existing law regarding driving while under the influence of drugs.*

~~(2)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23152 of the Vehicle Code, as amended
2 by Section 31 of Chapter 455 of the Statutes of 1995, is amended
3 to read:

4 23152. (a) It is unlawful for a person who is under the
5 influence of an alcoholic beverage or drug, or under the combined
6 influence of an alcoholic beverage and drug, to drive a vehicle.

7 (b) (1) It is unlawful for a person who has 0.08 percent or more,
8 by weight, of alcohol in his or her blood to drive a vehicle.

9 (2) For purposes of this article and Section 34501.16, percent,
10 by weight, of alcohol in a person's blood is based upon grams of
11 alcohol per 100 milliliters of blood or grams of alcohol per 210
12 liters of breath.

13 (3) In a prosecution under this subdivision, it is a rebuttable
14 presumption that the person had 0.08 percent or more, by weight,
15 of alcohol in his or her blood at the time of driving the vehicle if
16 the person had 0.08 percent or more, by weight, of alcohol in his
17 or her blood at the time of the performance of a chemical test
18 within three hours after the driving.

19 (c) It is unlawful for a person who is addicted to the use of a
20 drug to drive a vehicle. This subdivision shall not apply to a person
21 who is participating in a narcotic treatment program approved

pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code.

(d) (1) It is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210.

(2) In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

~~(e) (1) It is unlawful for a person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of prohibited substance in his or her urine or blood that is equal to or greater than the following:~~

~~(A) A concentration of cocaine in the person's urine of 150 nanograms per milliliter or in the person's whole blood, blood serum, or plasma of 50 nanograms per milliliter.~~

~~(B) A concentration of cocaine metabolite in the person's urine of 150 nanograms per milliliter or in the person's whole blood, blood serum, or plasma of 50 nanograms per milliliter.~~

~~(C) A concentration of heroin in the person's urine of 2,000 nanograms per milliliter or in the person's whole blood, blood serum, or plasma of 50 nanograms per milliliter.~~

~~(D) A concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of 10 nanograms per milliliter or in the person's whole blood, blood serum, or plasma of 10 nanograms per milliliter.~~

~~(E) A concentration of methamphetamine in the person's urine of 500 nanograms per milliliter or in the person's whole blood, blood serum, or plasma of 100 nanograms per milliliter.~~

~~(F) A concentration of phenethylidine (PCP) in the person's urine of 25 nanograms per milliliter or in the person's whole blood, blood serum, or plasma of 10 nanograms per milliliter.~~

~~(2) In a prosecution under this subdivision, it is a rebuttable presumption that the person had at least equal to or greater than the requisite amount of any of the above-referenced prohibited substances in his or her blood or urine at the time of the performance of a chemical test within three hours after the driving.~~

1 (e) (1) *It is unlawful for a person to drive or to be in actual*
2 *physical control of a vehicle on a highway or on premises to which*
3 *the public has access when the person has a measurable amount*
4 *in his or her blood or urine of any of the following:*

5 (A) *Cocaine or its metabolite.*

6 (B) *Heroin or its metabolite.*

7 (C) *Lysergic acid diethylamide (LSD) or its metabolite.*

8 (D) *Methamphetamine.*

9 (E) *3,4-methylenedioxy-methylamphetamine (MDMA),*
10 *commonly known as ecstasy, or its metabolite.*

11 (F) *Phencyclidine (PCP).*

12 (2) *In a prosecution under this subdivision, it is a rebuttable*
13 *presumption that the person had at least equal to or greater than*
14 *the measurable amount of a substance specified in paragraph (1)*
15 *in his or her blood or urine at the time of the performance of a*
16 *chemical test that occurs within three hours after the driving.*

17 (3) *On or before July 1, 2009, the Department of Justice, for*
18 *the purpose of this subdivision, shall issue regulations specifying*
19 *detectable levels of each of the substances specified in paragraph*
20 *(1) that would constitute a “measurable amount” to ensure the*
21 *uniform enforcement of this subdivision.*

22 (f) This section shall become operative on January 1, 1992, and
23 shall remain operative until the director determines that federal
24 regulations adopted pursuant to the Commercial Motor Vehicle
25 Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in
26 Section 383.51 or 391.15 of Title 49 of the Code of Federal
27 Regulations do not require the state to prohibit operation of
28 commercial vehicles when the operator has a concentration of
29 alcohol in his or her blood of 0.04 percent by weight or more.

30 (g) The director shall submit a notice of the determination under
31 subdivision-~~(e)~~ (f) to the Secretary of State, and this section shall
32 be repealed upon the receipt of that notice by the Secretary of
33 State.

34 SEC. 2. Section 23152 of the Vehicle Code, as amended by
35 Section 32 of Chapter 455 of the Statutes of 1995, is amended to
36 read:

37 23152. (a) It is unlawful for a person who is under the
38 influence of an alcoholic beverage or drug, or under the combined
39 influence of an alcoholic beverage and drug, to drive a vehicle.

(b) (1) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

(2) For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(3) In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for a person who is addicted to the use of a drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a narcotic treatment program approved pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code.

~~(d) (1) It is unlawful for a person who has a measurable amount of methamphetamine, amphetamine, cocaine, cocaine metabolite, heroin, or heroin metabolite in his or her blood to drive a vehicle.~~

~~(2) In a prosecution under this subdivision, it is a rebuttable presumption that the person had a measurable amount of methamphetamine, amphetamine, cocaine, cocaine metabolite, heroin, or heroin metabolite in his or her blood at the time of driving the vehicle if the person had a measurable amount of methamphetamine, amphetamine, cocaine, cocaine metabolite, heroin, or heroin metabolite in his or her blood at the time of the performance of a chemical test within three hours after the driving.~~

(d) (1) It is unlawful for a person to drive a vehicle or to be in actual physical control of a vehicle on a highway or on premises to which the public has access if the person has a measurable amount in his or her blood or urine of any of the following:

(A) Cocaine or its metabolite.

(B) Heroin or its metabolite.

(C) Lysergic acid diethylamide (LSD) or its metabolite.

(D) Methamphetamine.

(E) 3,4-methylenedioxy-methylamphetamine (MDMA), commonly known as ecstasy, or its metabolite.

(F) Phencyclidine (PCP).

(2) *In a prosecution under this subdivision, it is a rebuttable presumption that the person had at least equal to or greater than the measurable amount of a substance specified in paragraph (1) in his or her blood or urine at the time of the performance of a chemical test that occurs within three hours after the driving.*

(3) *On or before July 1, 2009, the Department of Justice, for the purpose of this subdivision, shall issue regulations specifying detectable levels of each of the substances specified in paragraph (1) that would constitute a “measurable amount” to ensure the uniform enforcement of this subdivision.*

(e) This section shall become operative only upon the receipt by the Secretary of State of the notice specified in subdivision (f) of Section 23152, as added by Section 25 of Chapter 1114 of the Statutes of 1989.

SEC. 3. Section 23158 of the Vehicle Code is amended to read:

23158. (a) Notwithstanding any other provision of law, only a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, a person who has been issued a “certified phlebotomy technician” certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic *or drug* content ~~therein~~ *in the blood*. This limitation does not apply to the taking of breath specimens. An emergency call for paramedic services takes precedence over a peace officer’s request for a paramedic to withdraw blood for determining its alcoholic *or drug* content. A certified paramedic shall not withdraw blood for this purpose unless authorized by his or her employer to do so.

(b) The person tested may, at his or her own expense, have a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a “certified phlebotomy technician” certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or any other person of his or her own choosing administer a test in addition to any test

1 administered at the direction of a peace officer for the purpose of
2 determining the amount of alcohol *or drug* in the person's blood
3 at the time alleged as shown by chemical analysis of his or her
4 blood, breath, or urine. The failure or inability to obtain an
5 additional test by a person does not preclude the admissibility in
6 evidence of the test taken at the direction of a peace officer.

7 (c) Upon the request of the person tested, full information
8 concerning the test taken at the direction of the peace officer shall
9 be made available to the person or the person's attorney.

10 (d) Notwithstanding any other provision of law, ~~no~~ a licensed
11 physician and surgeon, registered nurse, licensed vocational nurse,
12 duly licensed clinical laboratory scientist or clinical laboratory
13 bioanalyst, person who has been issued a "certified phlebotomy
14 technician" certificate pursuant to Section 1246 of the Business
15 and Professions Code, unlicensed laboratory personnel regulated
16 pursuant to Sections 1242, 1242.5, and 1246 of the Business and
17 Professions Code, or certified paramedic, or hospital, laboratory,
18 or clinic employing or utilizing the services of the licensed
19 physician and surgeon, registered nurse, licensed vocational nurse,
20 duly licensed clinical laboratory scientist or clinical laboratory
21 bioanalyst, person who has been issued a "certified phlebotomy
22 technician" certificate pursuant to Section 1246 of the Business
23 and Professions Code, unlicensed laboratory personnel regulated
24 pursuant to Sections 1242, 1242.5, and 1246 of the Business and
25 Professions Code, or certified paramedic, owning or leasing the
26 premises on which tests are performed, shall *not* incur any civil
27 or criminal liability as a result of the administering of a blood test
28 in a reasonable manner in a hospital, clinical laboratory, medical
29 clinic environment, jail, or law enforcement facility, according to
30 accepted venipuncture practices, without violence by the person
31 administering the test, and when requested in writing by a peace
32 officer to administer the test.

33 (e) Notwithstanding any other provision of law, a person who
34 has been issued a "certified phlebotomy technician" certificate
35 pursuant to Section 1246 of the Business and Professions Code
36 and who is authorized by this section to draw blood at the request
37 and in the presence of a peace officer for purposes of determining
38 its alcoholic *or drug* content, may do so in a jail, law enforcement
39 facility, or medical facility, with general supervision. The "certified
40 phlebotomy technician" shall draw blood following the policies

1 and procedures approved by a physician and surgeon licensed
2 under Chapter 5 (commencing with Section 2000) of Division 2
3 of the Business and Professions Code, appropriate to the location
4 where the blood is being drawn and in accordance with state
5 regulations.

6 (f) The Certified Phlebotomy Technician I or II shall carry a
7 current, valid identification card issued by the State Department
8 of ~~Health Services~~ *Public Health*, attesting to the technician's
9 name, certificate type, and effective dates of certification, when
10 performing blood withdrawals.

11 (g) As used in this section, "general supervision" means that
12 the supervisor of the technician is licensed under the Business and
13 Professions Code as a physician and surgeon, physician assistant,
14 clinical laboratory bioanalyst, registered nurse, or clinical
15 laboratory scientist, and reviews the competency of the technician
16 before the technician may perform blood withdrawals without
17 direct supervision, and on an annual basis thereafter. The supervisor
18 is also required to review the work of the technician at least once
19 a month to ensure compliance with venipuncture policies,
20 procedures, and regulations. The supervisor, or another person
21 licensed as a physician and surgeon, physician assistant, clinical
22 laboratory bioanalyst, registered nurse, or clinical laboratory
23 scientist, shall be accessible to the location where the technician
24 is working to provide onsite, telephone, or electronic consultation,
25 within 30 minutes when needed.

26 (h) Nothing in this section shall be construed as requiring the
27 certified phlebotomy technician who is authorized to withdraw
28 blood by this section at the request and in the presence of a peace
29 officer for purposes of determining alcoholic *or drug* content to
30 be associated with a clinical laboratory or to be directly supervised
31 after competency has been established.

32 (i) If the test given under Section 23612 is a chemical test of
33 urine, the person tested shall be given such privacy in the taking
34 of the urine specimen as will ensure the accuracy of the specimen
35 and, at the same time, maintain the dignity of the individual
36 involved.

37 (j) The department, in cooperation with the State Department
38 of ~~Health Services~~ *Public Health* or any other appropriate agency,
39 shall adopt uniform standards for the withdrawal, handling, and
40 preservation of blood samples prior to analysis.

1 (k) As used in this section, “certified paramedic” does not
2 include any employee of a fire department.

3 (l) Consent, waiver of liability, or the offering to, acceptance
4 by, or refusal of consent or waiver of liability by the person on
5 whom a test is administered, is not an issue or relevant to the
6 immunity from liability for medical or law enforcement personnel
7 or other facilities designated under subdivision (d).

8 *SEC. 4. It is the intent of the Legislature, in enacting this bill,*
9 *to not affect or preclude the prosecution of the violation of existing*
10 *provisions of law regarding driving while under the influence of*
11 *drugs.*

12 ~~SEC. 3.~~

13 *SEC. 5.* No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.